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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/061,731	02/01/2002	Kevin E. Mahaffy	AAI-003	1683
36822	7590	04/24/2006	EXAMINER	
GORDON & JACOBSON, P.C. 60 LONG RIDGE ROAD SUITE 407 STAMFORD, CT 06902			CUFF, MICHAEL A	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 04/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/061,731

Applicant(s)

MAHAFFY ET AL.

Examiner

Michael Cuff

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10 and 12-19 is/are pending in the application.
- 4a) Of the above claim(s) 1-7,9 and 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 10 and 12-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Amended Claims***

Newly amended claims 1-7, 9 and 11 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Inventions of a vending machine and a specific product and a vending machine are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the specific product in a vending machine does not further limit the vending machine. The subcombination has separate utility such as vending any product other than the specified one.

Since applicant has received an action on the merits for the originally presented and elected invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1-7, 9, and 11 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The examiner is following the guidance of 2173.05(e), which says that it is clear that the combination was intended.

The examiner highly recommends that applicant amend claim 1 to remove the item to be sold in the machine and maybe add a module configured to determine the age of the buyer and a module configured to compare the age of the buyer to the age restriction of an item that the vending machine is adapted to vend. See MPEP 2106 for guidance on language and make sure that there is specification support for any changes.

If the examiner could consider the claims, most likely a 35 USC 103 rejection would be made with an old cigarette vending machine. As broadly recited, this would read on the claim language. The examiner would be happy to place these claims back in the "considered" status when the technicality is resolved.

### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 12-13, 15-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Sehr (US 2001/0018660).

Sehr shows, figures 2 and 3, a method utilizing multi-service visitor cards. Paragraph 0029 shows that remotely located automated vending machines are one possible use for the invention. Paragraph 0038 discusses the video camera capturing biometric data to be compared and used for verification. Paragraph 0051 show the scanning of ID and determining the age and physical appearance of the visitor.

Paragraph 0094 shows that a confirmation process can also be implemented by a human operator. Paragraph 0050 shows a two-way communication link for the purpose of exchanging audio, video, or any other data. (Audio and video communication uses synthetic speech.)

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sehr in view of Collier et al.

Sehr, as applied above, shows all the limitations except for showing animated characters as an interface and having a sobriety test.

The examiner takes Official notice that the video displays with animated characters is well known in the art and that one of ordinary skill in the art would make use of these standard items in order to take advantage reliable off-the-shelf items.

Based on the discussion above, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify Sher system to incorporate video display animations with characters in order to take advantage reliable off-the-shelf items.

Collier et al. teaches a sobriety interlock to be used with a vehicle. Column 9, line 15 discusses that many types of machinery can be advantageously equipped with the invention in order to control the use of the machinery by those who are not sober.

Based on the teaching of Collier et al., it would have been obvious to one of ordinary skill in the art of controlling remote unsupervised mechanisms, at the time the invention was made, to modify Sher system to incorporate a sobriety test in order to control the use of the machinery by those who are not sober.

### ***Response to Arguments***

Applicant's arguments filed 10/6/05 have been fully considered but they are not persuasive.

In regards to arguments for claim 12, the new limitation does not further limit the apparatus claim. The examiner recommends that applicant use language such as some module configured to do a step performed by the interface. See MPEP 2106 for guidance on language and make sure that there is specification support for any changes.

Applicant cites MPEP 2144.03 to demand that the examiner cite a reference to support the official notice that video displays with animated characters is well known in the art and that one of ordinary skill in the art would make use of these standard items in order to take advantage reliable off-the-shelf items. The examiner cites MPEP 2144.03, "To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37

CFR 1.111(b).” and asserts that applicant has not properly traversed the official notice. However, in the spirit of customer service, the examiner is providing Kinebuchi et al. and Walker et al. as evidence that communication through an animated character is well known. Mr. Fork, item 300, in the Kinebuchi et al., reference especially shows the animated cartoon character makes it possible to convey to the user details such as the contents of each item in the menu screens and how to operate these menu screens, in a visually comprehensible form.

In regards to claim 10, applicant is trying read limitations into a simple teaching such that it will not apply to a combination. To quote more of column 9 previously cite, “While the above description constitutes a preferred embodiment of the apparatus and method of the invention, it is to be understood that the invention is not limited thereby and that in light of the present disclosure of the invention various other alternative embodiments will be apparent to persons skilled in the art. In particular, it should be recognized that while the invention is described with reference to its application to vehicles, many types of machinery can be advantageously equipped with the invention.”

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Cuff whose telephone number is (571) 272-6778. The examiner can normally be reached on 8:00 to 5:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Michael Cuff  
April 17, 2006

4/17/06